

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI

v.

SEAN M. QUICK

RESPONDENT,

APPELLANT.

**DOCKET NUMBER WD71058
MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: February 1, 2011

Appeal From:

Boone County Circuit Court
The Honorable Gary M. Oxenhandler, Judge

Appellate Judges:

Division One: James M. Smart, Jr., P.J., Mark Pfeiffer and Cynthia L. Martin, JJ.

Attorneys:

Shaun J. Mackelprang and Richard A. Starnes, Jefferson City, MO, **for respondent.**

Frank K. Carlson, Union, MO, **for appellant.**

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
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STATE OF MISSOURI,

RESPONDENT,

v.

SEAN M. QUICK,

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No. WD71058

Boone County

Before Division One Judges: James M. Smart, Jr., P.J., Mark Pfeiffer and Cynthia L. Martin, JJ.

Sean Quick was charged with one count of felony promotion of child pornography in the first degree (by offering files through file-sharing) and two counts of felony possession of child pornography.

The trial court allowed testimony related to Quick's oral statements to police in an interview that the court determined was a voluntary non-custodial interview.

The State introduced two exhibits (Exhibits 16 and 17), both of which depicted child pornography. The court admitted Exhibit 16 over the defense objection. Quick waived objection as to the admission of Exhibit 17. The State published to the jury portions of State's Exhibits 16 and 17, also over defense objection. Defense counsel objected on grounds that they were being published only to elicit the prejudices and sympathy and emotions of the jury.

At the instruction conference, defense counsel unsuccessfully objected to Instructions 6, 7, 8, 9, and 10, on grounds that they instructed the jury to find Quick guilty if he was "aware" of the content and character of the videos found on his computer, although "aware" posits a lesser mental state than "knew," which was the language used in the statutes under which Quick was charged.

The jury returned verdicts of guilty on both Counts. The trial court sentenced Quick to eight years for Count I and four years for Count II, to be served concurrently in the Missouri Department of Corrections.

Quick appeals.

AFFIRMED.

Division One holds:

Quick's claim regarding State's Exhibit 17 is not preserved because he affirmatively stated that he had no objection to the exhibit.

While it must certainly be true that Exhibit 16 was shocking, graphic, and greatly disturbing, there is no indication from the record that there was any attempt by the State to dramatize or exaggerate its content. Even though there was testimony describing the videos, and even though Quick offered to stipulate that the videos were child pornography, a photograph is not rendered inadmissible because other evidence may have described what is shown in the photograph; nor is the State precluded from introducing the photograph because the defendant expresses a willingness to stipulate to some of the issues involved.

The trial court had factors, circumstances, and testimony from which the court could and did reasonably conclude that this was not a custodial interrogation. The evidence is consistent with the notion that Quick, though planning to leave before long, chose to stay and voluntarily cooperate with the interview until the officers left and, thus, was not in custody.

Both crimes with which Quick was charged required a finding that Quick acted regarding the child pornography "knowing of its content and character." Both verdict directors submitted this element by requiring a finding that "defendant at the time was aware of the content and character of the material." Both verdict directors were patterned after approved instructions, which permitted the State to elect the language "was aware" to submit the knowing mental state. Thus, the instructions conformed to the approved pattern instructions.

Opinion by: James M. Smart, Jr., Judge

February 1, 2011

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